

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Edwin Reeves Hazel, III,)	
)	C/A No. 6:10-00321-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
Sargent Rosemary Sanders and)	
Captain Cliff McElvogue,)	
)	
Defendants.)	
_____)	

Plaintiff Edwin Reeves Hazel, III is an inmate in custody of the South Carolina Department of Corrections who at the time of the underlying events was housed at the Berkeley County Detention Center in Moncks Corner, South Carolina. Plaintiff, proceeding pro se, filed this action on February 11, 2010, alleging that Defendants denied him access to the courts and tampered with his mail in violation of his constitutional rights, and that Defendants denied him access to a grievance system. Plaintiff further alleges that he was subjected to unconstitutional conditions of confinement and was retaliated against for filing civil lawsuits. Thus, Plaintiff brings this action pursuant to 42 U.S.C. § 1983. Plaintiff seeks damages and injunctive and declaratory relief.

This matter is before the court on motion for summary judgment filed by Defendants on April 13, 2010 (ECF No. 15). By order filed April 14, 2010, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the summary judgment procedures and the possible consequences if he failed to respond adequately. Plaintiff filed a response in opposition to Defendants' motion on May 7, 2010.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling. On October 18, 2010, the

Magistrate Judge issued a Report and Recommendation in which he recommended that Defendants' motion for summary judgment be granted with respect to Plaintiff's access to court claim and his prayer for injunctive and declaratory relief. The Magistrate Judge further recommended that Defendants' motion for summary judgment be denied with respect to Plaintiff's remaining claims. No party filed objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record and adopts the Report and Recommendation and incorporates it herein by reference. Defendants' motion for summary judgment (ECF No. 15) is **granted** as to (1) Plaintiff's access to court claim, to include his complaints about not having access to paper, envelopes, and writing utensils; (2) Plaintiff's claim concerning lack of access to a grievance system; and (3) Plaintiff's requests for injunctive and declaratory relief, which requests are now moot because Plaintiff no longer is in custody of the Berkeley County Detention Center. Defendants' motion for summary judgment is **denied** as to Plaintiff's claims for (1) damages for

improper classification, (2) denial of adequate opportunity to exercise and to shower, (3) denial of a proper diet, and (4) retaliation for filing civil law suits. The Clerk of Court is directed to place the within action on the trial roster for January 2011.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

November 17, 2010